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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,003	12/14/2001	Thomas T. Hardt	COMP:0253/VAN P00-3346	2407

7590 07/09/2003

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EXAMINER

FLANDRO, RYAN M

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 07/09/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/022,003

Applicant(s)

HARDT, THOMAS T.

Examiner

Ryan M Flandro

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Specification*

1. In light of Applicant's Amendment (paper no. 5) submitted 15 April 2003, the objections to the specification as set forth in the previous Office action (paper no. 4) are hereby withdrawn.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Chaban (US 5,738,475).
  - a. Claim 16. Chaban discloses a body **120**; a head **128** disposed at one end of the body **120**; a deformable retention member **132** disposed at a generally opposite end of the body **120** from the head **128**; and a stop **124** positioned at a predetermined distance from the head **128** to permit control of the deformation of the deformable retention member **132**. (See generally 6 and 7; column 7 lines 21-65).
  - b. Claim 17. Chaban further shows that the deformable retention member **132** comprises a generally circular lip (figure 7).
  - c. Claim 18. Chaban also shows that the stop **124** is disposed within the generally circular lip **132** (figure 7).

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-15, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaban (US 5,738,475) in view of Whiteside et al (US 3,551,015) (“Whiteside”).

a. Claim 1. Chaban discloses a first member **88** and a second member **82**, a pivot structure **92** having a head **128** disposed at one end of the pivot structure **92**, a body **120** connected to the head **128**, a stop **124** and a lip **132** disposed at a generally opposite end of the body **120** from the head **128**, the body **120** extending through the first member **88** and the second member **82**, the lip **132** being deformed generally towards the stop **124** to prevent separation of the second member **82** from the first member **88** while enabling relative pivotal motion between the first **88** and second member **82**. (See generally figures 5-7; column 3 line 49 – column 4 line 9; column 7 lines 21-65).

i. Chaban lacks disclosure of the first member having a plastically deformed region receiving the head to form a substantially flat surface with the first member. Whiteside, however, teaches a first member **40** having a plastically deformed region receiving a head **12** to form a substantially flat surface with the first member **40** (see figures 4b-4d; column 3 lines 49-62) in order to secure the rivet to the first member and increase fatigue strength characteristics (column 4 line 63).

- ii. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made modify the rivet of Chaban by providing the first member with a plastically deformed region receiving the head to form a substantially flat surface with the first member in order to secure the rivet to the first member while increasing the fatigue strength of the assembly as taught by Whiteside.
- b. Claim 2. The combination of Chaban and Whiteside includes the body **120** having a generally circular cross-section (see Chaban figure 5).
- c. Claim 3. The combination of Chaban and Whiteside further includes the lip **132** encircling the stop **124** (see Chaban figure 7).
- d. Claims 4 and 20. The combination of Chaban and Whiteside, as applied above, further includes a relief **18** cut proximate a head **12** in order to receive some of the displaced material from a first member **40** during deformation (see Whiteside figures 1, 2, and 4a-4d; column 3 lines 58-62).
- e. Claims 5, 6, and 19. The combination of Chaban and Whiteside fails to explicitly disclose that the head has a plurality of flat sides (claims 5 and 19) as well as that the flat sides are arranged in a hexagon (claim 6). It has been held, however, that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the sides of the head of the combination of Chaban and Whiteside to make them flat or to arranged them in a hexagon shape. Further, the combination of Chaban and

Whiteside fails to explicitly state the reason for the shape of the sides as being to better secure the head to the first member during plastic deformation of the first member as recited in claim 19. Nevertheless, where there is reason to believe that a functional limitation asserted to be critical to establishing novelty in the claimed subject matter may, in fact, be an inherent characteristic of the prior art, Applicant may be required to prove that the subject matter shown in the prior art does not possess the characteristic relied upon. In re Spada, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990); In re King, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986); In re Hallman, 655 F.2d 212, 215, 210 USPQ 609, 611 (CCPA 1981); In re Fitzgerald, 619 F.2d 67, 70, 205 USPQ 594, 596-97 (CCPA 1980); In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977); In re Ludtke, 441 F.2d 660, 664, 169 USPQ 563, 566 (CCPA 1971); In re Swinehart, 439 F.2d 210, 213, 169 USPQ 226, 229 (CCPA 1971).

f. Claim 7. The combination of Chaban and Whiteside includes the first member 52 being formed from a metal sheet material (see Chaban figure 5; column 6 line 48).

g. Claims 9-15. The combination of Chaban and Whiteside, as applied above, is substantially the same as the rivet system recited in the instant application and therefore, the recited method of forming such rivet system would be inherent to the combination. Under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification, it can be assumed the device will inherently perform the same process. In re King, 802 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

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6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Chaban and Whiteside, as applied to claim 7 above, further in view of applicant's admission at pages 2-3 of the disclosure. Specifically, the combination of Chaban and Whiteside includes the first member being formed from a metal sheet material, but fails to explicitly disclose or teach the metal sheet material being a portion of a computer chassis. Applicant, however, admits that pivot connections are common in computer chassis (see page 2, first full paragraph under "Background of the Invention") and that a rivet connection would provide a faster method for providing such a connection (see page 3, first full paragraph). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made modify the connection of Chaban and Whiteside by providing that the metal sheet material be a portion of a computer chassis in order to provide a fast pivot connection in a computer chassis as taught by applicant's own admission.

### ***Response to Arguments***

7. Applicant's arguments, see paper no. 5 pages 3-7, filed 15 April 2003, with respect to the rejection(s) of claim(s) 1, 9, and 16 under 35 USC §103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the combination of Chaban and Whiteside, as set forth above.

### ***Conclusion***

8. This action is NON-FINAL.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan M Flandro whose telephone number is (703) 305-6952.

The examiner can normally be reached on 8:30am - 5:30pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H Browne can be reached on (703) 308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

RMF  
June 27, 2003

  
**Lynne H. Browne**  
*Supervisory Patent Examiner*  
**Technology Center 3670**